

DEPARTMENT OF THE ARMY
SAVANNAH DISTRICT CORPS OF ENGINEERS
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SAVANNAH, GEORGIA 31402-0889

DISTRICT REGULATION
NO. 27-1-1

1 February 1996

LEGAL SERVICES

Tort Suits Brought Against Government Employees Personally

1. Purpose. The purpose of this regulation is to inform all District employees of the provisions of the references cited below.

2. References.

a. Paragraph 5-5, ER 27-1-1, Legal Services, CLAIMS AND LITIGATION.

b. Chapter 4, AR 27-40, Legal Services, LITIGATION.

c. Federal Employees Liability Reform and Tort Compensation Act of 1988 P.L. 100-694.

3. Suits Arising Out of the Operation of Motor Vehicles.

a. Title 28, section 2679(b), of the United States Code provides that suits against Government employees for personal injury or property damage in state or federal courts arising from operation of motor vehicles within the scope of their employment are deemed to be suits against the United States, and that the remedy against the Government is exclusive of any other action or proceeding by reason of the same subject matter against the employee or his or her estate. Subsection 2679(c) provides that the Attorney General shall defend such suits.

b. Scope of employment is generally defined as conduct that is authorized expressly or implied by a supervisor or superior.

This regulation supersedes DR 27-1-1, 1 Apr 90

c. The references cited in paragraph 2 provide that an employee served with process in such circumstances shall deliver all process and pleadings to the Office of Counsel by the most expeditious means possible, notifying and obtaining the assistance of his or her supervisor.

4. Tort Suits Arising Other Than Out of the Operation of Motor Vehicles. Occasionally employees and officers are sued personally for damages in state or federal courts as a result of actions arising out of the performance of their duties in their official capacity other than as operators of motor vehicles. Government defense counsel can only be furnished upon the concurrent consent of the defendant and the Attorney General, but it is assumed that most Government personnel will want Government counsel, and that in any event they will consent to such action where the Government has a clear and direct interest in the suit. Regardless of the Government's direct interest, it is the policy of the Attorney General to furnish counsel whenever requested if the incident apparently arose in the course of performance of official duties by the defendant. Such instances will be immediately brought to the attention of the District Counsel by employees through their supervisors.

5. Personal Liability for Torts in State Court. In 1988 the Supreme Court ruled in the case of Westfall v. Erwin, 108 S. Ct. 580 (1988), that federal employees are entitled to immunity from state court tort actions only if the challenged conduct is a discretionary act, and is within the outer perimeter of the employee's line of duty. The Federal Employees Liability Reform and Tort Compensation Act of 1988 reverses the Supreme Court's decision making the government liable for the negligent acts or omissions by federal employees committed during the course of their employment.

It now precludes any state court action against an employee arising out of his or her official duties. In such state court actions the United States is deemed the defendant. It does not make the government liable for intentional torts committed by government employees, nor does it cover a tortious violation of individuals' constitutional rights. It also does not take away rights to sue government employees conferred under other statutes.

6. Requests for Indemnification. The Department of the Army cannot generally indemnify or pay for money judgments, verdicts, or awards rendered against employees in their individual capacities. Reference 2.c. provides that in extraordinary circumstances the Army may consider a request for indemnification from an employee if the conduct that resulted in the personal liability of the employee was within the scope of his or her official duties, and the indemnification would be in the best interest of the United States. To receive indemnification, the employee must request it providing the information specified in the AR, and the request must be recommended by the requester's supervisor. Indemnification can only be had if there is a legal authority for it and appropriated funds are available.

7. All supervisors will disseminate the preceding to their employees.

GRANT M. SMITH
Colonel, Corps of Engineers
Commanding

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